

Majorities, Not Consensus: Reforming UNCCW Decision-Making

Rosert, Elvira

Veröffentlichungsversion / Published Version
Stellungnahme / comment

Empfohlene Zitierung / Suggested Citation:

Rosert, E. (2021). *Majorities, Not Consensus: Reforming UNCCW Decision-Making*. (IFSH Policy Brief, 01/21). Hamburg: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg (IFSH). <https://doi.org/10.25592/ifsh-policy-brief-0121>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-ND Lizenz (Namensnennung-Keine Bearbeitung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier: <https://creativecommons.org/licenses/by-nd/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-ND Licence (Attribution-NoDerivatives). For more information see: <https://creativecommons.org/licenses/by-nd/4.0>



Majorities, Not Consensus: Reforming UNCCW Decision-Making

The United Nations Conference on Certain Conventional Weapons (UNCCW) is the only multilateral humanitarian arms control forum. Yet the consensus principle by which it makes decisions has repeatedly thwarted progress and is endangering the current process on the use of autonomy in weapons systems: if negotiations for a legally binding instrument are not launched in 2021, this goal is likely to be pursued outside the UNCCW. Failure to ban inhumane technology for a third time in a row would considerably damage the legitimacy of the UNCCW. To restore the UNCCW's decision-making ability, this policy brief makes the following recommendation:

- The UNCCW delegates should change their voting procedure by replacing the current consensus principle with majority voting.

In the 40 years since the adoption of the Convention on Certain Conventional Weapons (CCW), the corresponding conference (the UNCCW) has passed only one treaty banning the use of a weapon category deemed inhumane, namely Protocol IV on blinding laser weapons, which was agreed upon in 1995. Two major successes of humanitarian arms control – the treaties banning anti-personnel landmines and cluster munitions – had to be adopted outside of the UNCCW after its members were unable to reach the required consensus. Protocol V on explosive remnants of war (ERW), which the UNCCW managed to adopt in 2003, turned out to be fairly weak, placing the clearance responsibilities on the countries that were contaminated by ERW and not on the users of ERW-producing weapons. At present, autonomy in weapons systems, on which the UNCCW has been holding expert talks since 2014, could become the next problem that the conference is unable to resolve if the delegates agree on a weak political declaration or cannot agree at all. Launching another outside process to negotiate a legally binding document will again undermine confidence in the UNCCW and further weaken its standing. Emphasizing that the UNCCW must remain the main venue not only for discussing but also for resolving humanitarian arms control issues, this policy brief argues for an alternative: a procedural reform that would replace consensus voting with two-thirds majority voting.

Humanitarian arms control (HAC) regulates the use, production, clearance, and trading of weapons deemed particularly inhumane because they inflict cruel injuries or do not discriminate between combatants and civilians. With its origins in international humanitarian law, HAC has traditionally been the domain of the International Committee of the Red Cross (ICRC). In the 1970s, however, governments participating in the Diplomatic Conferences convened by the ICRC could not agree on specific provisions on inhumane weapons. In turn, the UN General Assembly

conducted a conference that, in 1980, concluded the negotiations by adopting the framework document of the CCW and its three protocols: Protocol I on undetectable fragments, Protocol II on landmines, and Protocol III on incendiary weapons.

While the next three milestones of HAC – legally

binding prohibitions on blinding lasers, land mines and cluster munitions – were set with the involvement of the UNCCW, only Protocol IV on laser weapons was actually achieved there. By contrast, the bans on mines and cluster bombs were opposed by some member states and were thus impossible in the UNCCW, which decides by consensus. As a consequence, interested governments, partnering with non-governmental organizations (NGOs), held negotiations for ban supporters outside the UN: the Ottawa Process on Anti-Personnel Landmines in 1997, and the Oslo Process on Cluster Munitions in 2007/2008.

Currently, leaving the UNCCW is being considered again – this time by the Campaign to Stop Killer Robots which demands to establish a legally binding instrument for regulating the use of autonomy in weapon systems.¹ The CCW Group of Governmental Experts has been discussing the topic for years, with limited progress. Now that it seems that a non-binding political declaration is the maximum one can hope for within the UNCCW, a treaty banning autonomous weapons may be the next agreement pursued beyond the UN framework.

“TO RETAIN THE UNCCW AS FORUM FOR SERIOUS NEGOTIATIONS, IT IS NECESSARY TO RESTORE ITS DECISION-MAKING ABILITY.”

Another failure of this sort, which would solidify the UNCCW's role as a catalyst that merely initiates discussions without concluding them, could have far-reaching consequences. First, its reputation for ineffectiveness could become a self-fulfilling prophecy since the delegates' limited confidence in the prospects of successful cooperation would limit the chances of such cooperation in advance. Second, another failure could increase the hurdles to addressing problematic weapons at the international level. Furthermore, holding debates on inhumane weapons in the UNCCW is crucial because consistent exposure to certain arguments has an impact on norm opponents, leading them to gradually adjust their positions and behaviour.² Such socialization effects would fade if a separate bubble of arms control supporters were to replace the more inclusive UNCCW.

If the UNCCW is to remain a forum for serious negotiations, it is necessary to restore its decision-making capacity. I therefore suggest modifying its voting procedure by moving from consensus to majority voting. Consensus decisions undoubtedly have a special normative appeal. Promising to be more inclusive and to strike a balance between different positions, they make participation in decision-making attractive. In addition, they indicate that persuasion has taken

place, at the end of which the better arguments have prevailed. Finally, the likelihood of compliance is higher if everyone has agreed to the new norms.

There are cases, however, where reality diverges from the ideal. Consensus may be an illusion, only seemingly involving unanimous support and concealing power imbalances. Furthermore, voting by consensus grants every member a de-facto veto right, which can paralyze the forum. In the UNCCW, the opponents of arms control have repeatedly thwarted decisions to protect their military interests.

In formal terms, consensus voting is more a UNCCW tradition than an explicit procedural requirement. When the framework convention was adopted in 1980, this indeed occurred without a vote. But what appears to be substantive consensus was in fact the result of procedural dissent: the delegates did not vote because they could not agree on how to vote.

**“CONSENSUS SHOULD
BE KEPT AS A
POLITICAL OBJECTIVE,
BUT BE
SAFETY NETTED
THROUGH A
MAJORITY VOTING
RULE.”**

Modern Humanitarian Arms Control Agreements

Treaty	Date of Adoption/ Entry into Force	State Parties	Negotiation Fora
Convention on Certain Conventional Weapons	1980/1983	125	ICRC → UN Conference on Certain Conventional Weapons (UNCCW)
Protocol I: Non-Detectable Fragments	1980/1983	118	International Committee of the Red Cross (ICRC) → UNCCW
Protocol II: Mines, Booby Traps and Other Devices	1980/1983, amended in 1996	95	ICRC → UNCCW
Protocol III: Incendiary Weapons	1980/1983	115	ICRC → UNCCW
Protocol IV: Blinding Laser Weapons	1995/1999	109	UNCCW
Protocol V: Explosive Remnants of War	2003/2006	96	UNCCW
Anti-Personnel Mine Ban Convention	1997/1999	164	UNCCW → Ottawa Process
Convention on Cluster Munitions	2008/2010	110	UNCCW → Oslo Process

Data: https://ihl-databases.icrc.org/ihl_26.01.2021.

Nevertheless, this procedure set a precedent for the future workings of the conference. While Article 34 of its rules of procedure (RoP) does not specify a voting mode, it demands that all decisions be made in accordance with Article 8 (2b) of the CCW – which stipulates that any amendments and subsequent protocols must be adopted in the same manner as the convention itself. However, the UN Office of Legal Affairs stated in 1995 that 1) a voting procedure resulting from a non-decision did not constitute a rule for future voting processes, and 2) the conference is free to choose a different voting procedure.³ According to Article 18 of the RoP, a majority of state parties would constitute a quorum for this – procedural – decision.

As in the successful examples of the Ottawa and Oslo processes, consensus should be kept as a political objective, but it should be safety-netted through a majority voting rule. I suggest fixing the quorum at two-thirds of the CCW members. This would not only signal greater agreement but would likely be a more feasible reform goal as it represents a less radical departure from the consensus principle than a vote by simple majority. Exploiting its procedural room for manoeuvre and changing the voting mode will strengthen the UNCCW's ability to act, allowing it to serve as the decision-making body for curbing the use of inhumane weapons it was designed to be.

ENDNOTES

¹ <https://twitter.com/BanKillerRobots/status/1309454302243622912>, 7.1.2021.

² Bower, Adam 2015: Norms Without the Great Powers: International Law, Nested Social Structures, and the Ban on Antipersonnel Mines, in: International Studies Review 17: 3, 347–373.

³ United Nations Juridical Handbook 1995, 454–455.

ABOUT THE AUTHOR

Prof. Dr. Elvira Rosert is a Junior Professor at the Institute for Peace Research and Security Policy at the University of Hamburg (IFSH).

ABOUT THE INSTITUTE

The Institute for Peace Research and Security Policy (IFSH) researches the conditions for peace and security in Germany, Europe and beyond. The IFSH conducts its research independently. It is funded by the Free and Hanseatic City of Hamburg.



Hamburg

Funded by:

Ministry of Science,
Research, Equalities
and Districts

DOI: <https://doi.org/10.25592/ifsh-policy-brief-0121>

Copyright Cover Photo: AFP Text License: Creative Commons CC-BY-ND (Attribution/NoDerivatives/4.0 International).



IFSH – Institute for Peace Research and Security Policy at the University of Hamburg

Beim Schlump 83 20144 Hamburg Germany Phone +49 40 866077-0 ifsh@ifsh.de www.ifsh.de